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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,096	01/14/2004	Michael Weinberger	LOJM-1999	3496
7590 04/04/2005 Michael Weinberger 3rd Floor 236 W. 26St New York City, NY 10001			EXAMINER PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5P

Office Action Summary	Application No. 10/757,096	Applicant(s) WEINBERGER, MICHAEL	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/18/2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 4 and 5 have been considered but are moot in view of the new ground(s) of rejection.

In the response filed on 10/18/2004 applicant argues, for example:

- Orlov component 30 is not a fuel cartridge, as the Office Action states. Instead, 30 is a drawer, as Orlov makes clear at column 3, line 22. This drawer holds a separate metal box which Orlov calls, at column 3, line 11, a "reservoir";
- Orlov component 34 is not the top of the fuel reservoir 32, as the Office Action states, but rather, is the "aperture plate";
- Orlov component 52 is not the removable lid to Orlov's "fuel reservoir" 32, as the Office Action states, but rather, is the "snuffer plate" portion of the drawer mechanism; and,
- Orlov's "fuel reservoir" is different from my fuel cartridge. Orlov specifically states, at column 1, line 42, that his "fuel reservoir" may have "no cover at all." My fuel cartridge, however, has a cover. The cover consists of two pads (22a and 22b) that serve an important purpose. Parts 22a and 22b, working together create a specifically defined fuel exit aperture 23 (or apertures) in the top of the cartridge. The size of the fuel exit aperture determines how the fuel in an individual cartridge will burn, and this, in turn, determines flame size, number, and burn time.

In this regard, applicant is reminded that broadest reasonable interpretation consistent with the specification.

(M.P.E.P. - 2111) CLAIMS MUST BE GIVEN THEIR BROADEST REASONABLE INTERPRETATION

During patent examination, the pending claims must be "given *>their< broadest reasonable interpretation consistent with the specification." > In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).< Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) ... Rather, the "PTO applies to verbiage of the

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proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.").

Applicant's attention is directed to the prior art references of, for example, **US004875464 (SHIMEK et al)**, **US005499576A (GUNDER)**, **EP 0 264 014 (BETTINARDI)**, **US003262445 (STULTS et al)** and **US005326379A (GARDNER)** which are now cited to address the limitations in applicant's newly presented claims 4 and 5.

US004875464 (SHIMEK et al) discloses forming an artificial log set may be in the form of a continuous log 24C which may take several configurations including a log arrangement which may be in two parts

US004875464 (SHIMEK et al) discloses:

"... The continuous log 24C may take several configurations only one of which is shown in FIG. 7. An intermediate support 39 shown in phantom lines may be provided in the center of the log arrangement 24C or the log arrangement may be in two parts which lock together or connect together to form the continuous arrangement 24C."

Each of **US005326379A (GARDNER)**, **US003262445 (STULTS ET AL)**, **US005143046A (KOZIOL)** and **EP 0 264 014 (BETTINARDI)** forming alcohol fuel cartridge type containers alternatively as round or elongated shaped containers.

In particular, Applicant's attention is directed to **EP 0 264 014 (BETTINARDI)** which uses "gelatinous fuel made of a predominantly alcohol base" in the alcohol fuel cartridge type

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container which is alternatively formed as a round or elongated container. SEE ALOS
US005143046A (KOZIOL) which uses "Sterno jellied flammable hydrocarbons 166".

US005499576A (GRUNDER) discloses burning fuel such as "fire-starter paste or the
like" (e.g. - methylated spirit or the like) in an open top elongated container type burner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4 and 5: Provisionally Rejected under Obviousness-Type Double

Claims 4-5 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-3 of copending Application No. 10/794,605. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to a person having ordinary skill in the art to omit the simulated log set (i.e. - claim 4 of the present application) in order to operate the burner as an independent heat source. Omission of an element and its function is obvious if the function of the element is not desired *Ex parte Wu*, 10 USPQ 2031 (Bd.

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Pat. App. & Inter. 1989). See also In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965) (Omission of additional framework and axle which served to increase the cargo carrying capacity of prior art mobile fluid carrying unit would have been obvious if this feature was not desired.); and In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (deleting a prior art switch member and thereby eliminating its function was an obvious expedient).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5: Rejected under 35 U.S.C. 102(b)

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by **US006267113B1 (MAUST)**.

US006267113B1 (MAUST) shows and discloses a generally rectangular shaped fuel cartridge (36) having a width that is greater than its depth, the cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing alcohol gel fuel (see column 8, lines 17-30), the top comprising at least one flame exit aperture

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of generally rectangular shape (61) which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge, where the combustion of the fumes produces a generally rectangular shaped fire (81).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which THE subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5: Rejected under 35 U.S.C. 103(a)

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US005499576A (GRUNDER) in view of US006267113B1 (MAUST).

US005499576A (GRUNDER) shows and discloses an apparatus consisting of a generally rectangular shaped fuel cartridge (2) having a width that is greater than its depth, the cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing a "paste or the like" fuel, the top comprising at least one flame exit aperture (not referenced; see figure 2) of generally rectangular shape which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge to spread across the entire burner surface (see column 2, lines 14-16). The burner (2) of US005499576A (GRUNDER) is "surrounded, at a lateral distance from it, by a chimney-like hood 4".

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US005499576A (GRUNDER) shows and discloses the invention substantially as set forth in claim 5 with possible exception to the fuel being that of an alcohol gel.

US006267113B1 (MAUST) shows and discloses a generally rectangular shaped fuel cartridge (36) having a width that is greater than its depth, the cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing alcohol gel fuel (see column 8, lines 17-30), the top comprising at least one flame exit aperture of generally rectangular shape (61) which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge, where the combustion of the fumes produces a generally rectangular shaped fire (81). It is further noted that US006267113B1 (MAUST) discloses that the log set (26) may be formed in one piece or in a plurality of separate pieces.

In regard to claim 5, for the purpose of providing a suitable alternative paste-like fuel, it would have been obvious to a person having ordinary skill in the art to substitute an alcohol gel fuel for the "paste or the like" fuel in US005499576A (GRUNDER), in view of the teaching of US006267113B1 (MAUST).

Claim 4: Rejected under 35 U.S.C. 103(a)

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US005499576A (GRUNDER) in view of US006267113B1 (MAUST) and further in view of US004875464 (SHIMEK et al).

US005499576A (GRUNDER) shows and discloses an apparatus consisting of a generally rectangular shaped fuel cartridge (2) having a width that is greater than its depth, the cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing a "paste or the like" fuel, the top comprising at least one flame exit aperture (not referenced; see figure 2) of generally rectangular shape which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge to spread across the entire burner surface (see column 2, lines 14-16). The burner (2) of US005499576A (GRUNDER) is "surrounded, at a lateral distance from it, by a chimney-like hood 4".

US005499576A (GRUNDER) shows and discloses the invention substantially as set forth in claim 5 with possible exception to:

- the fuel being that of a "alcohol gel"; and,
- a noncombustible unitary cast generally rectangular shaped simulated log set having multiple flame exit openings formed between a plurality of simulated log set simulated elements.

US006267113B1 (MAUST) shows and discloses a generally rectangular shaped fuel cartridge (36) having a width that is greater than its depth, the cartridge consisting of metal sidewalls of a given height, a metal base and a metal top defining an interior space containing alcohol gel fuel (see column 8, lines 17-30), the top comprising at least one flame exit aperture of generally rectangular shape (61) which permits fumes from the alcohol gel fuel to emanate from the interior space of the cartridge, where the combustion of the fumes produces a generally rectangular shaped fire (81). It is further noted that US006267113B1 (MAUST) discloses that the log set (26) may be formed in one piece or in a plurality of separate pieces.

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US004875464 (SHIMEK et al) teaches from the same burner field of endeavor as US005499576A (GRUNDER) forming an air directing burner enclosure in to appear as an artificial log set. The log set of US004875464 (SHIMEK et al) manufactured as a continuous log 24C which may take several configurations including a log arrangement which may be in two parts.

In regard to claim 4, for the purpose of providing a suitable alternative paste-like fuel, it would have been obvious to a person having ordinary skill in the art to substitute an alcohol gel fuel for the "paste or the like" fuel in US005499576A (GRUNDER), in view of the teaching of US006267113B1 (MAUST). Also, in regard to claim 4, for the purpose of forming the burner of US005499576A (GRUNDER) to appear like a burning set of logs, it would have been obvious to a person having ordinary skill in the art to modify the US005499576A (GRUNDER) burner enclosure (4) to be in the form of a noncombustible unitary cast generally rectangular shaped simulated log set having multiple flame exit openings formed between a plurality of simulated log set simulated elements, in view of the teaching of US004875464 (SHIMEK et al). Also, regarding the recitation that that the logs are "formed to present the appearance of multiple logs and twigs touching one another", a change in shape is generally recognized as a design consideration within the level of ordinary skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1966).

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CARL D. PRICE** whose telephone number is **(571) 272-4880**. The examiner can normally be reached on Monday through Friday between **6:30am-3:00pm**.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

Cp

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